

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 30 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

MARIA DE LOS ANGELES JUAREZ-
BAEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 03-72508

Agency No. A72-902-584

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals
Submission Deferred February 8, 2006
Pasadena, California
Resubmitted August 29, 2006^{**}

Before: PREGERSON, W. FLETCHER, and BYBEE, Circuit Judges.

Maria Juarez-Baez appeals the Board of Immigration Appeal's ("BIA")
2003 denial of her motion to reopen claiming ineffective assistance of counsel and

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

seeking to introduce new evidence showing a decline in her daughter, Esmerelda's, health. We grant the petition for review and remand to the BIA for further proceedings.

We review the denial of a motion to reopen for an abuse of discretion. *See Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004). We review ineffective assistance of counsel claims de novo. *See Dearingier ex rel. Volkova v. Reno*, 232 F.3d 1042, 1044-45 (9th Cir. 2000).

Juarez-Baez initially sought relief from removal in the form of suspension of deportation before the immigration judge. Petitioners have a due process right to effective assistance of counsel when applying for discretionary relief. *Castillo-Perez v. INS*, 212 F.3d 518, 526-27 (9th Cir. 2000); *Lin v. Ashcroft*, 377 F.3d 1014, 1027 (9th Cir. 2004). In order to establish ineffective assistance of counsel, Juarez-Baez must show both that her counsel failed to perform with sufficient competence and that she suffered prejudice. *See Lin*, 377 F.3d at 1027.

With respect to deficient performance, “[w]e do not require that [petitioner’s] representation be brilliant, but it cannot serve to make [the] immigration hearing so fundamentally unfair that [petitioner] was prevented from reasonably presenting his case.” *Id.* (internal quotation marks omitted). We conclude that Juarez-Baez has satisfied the deficient performance prong because

counsel's failure to explain to Juarez-Baez what was required to prevail on a suspension of deportation claim, to speak with Esmerelda's doctors regarding her medical condition, and to ask for updated information on Esmerelda's condition prevented Juarez-Baez from reasonably presenting her case.

Notably, during the hearing both the judge and government counsel commented on the insufficiency of the medical evidence presented regarding Esmerelda's heart condition. The judge openly asked counsel, "Why don't we have a doctor's letter saying she still needs medical attention, this is the prognosis?" The need for such a letter (or its equivalent) would have been obvious to any competent counsel, and there is no indication in this case that it would have been unduly difficult to obtain. Government counsel commented that the one item of evidence, over three years old, "doesn't go into any type of detail regarding what the follow ups need to entail."

With respect to prejudice, the inquiry is whether counsel's performance "may have affected the outcome of the proceedings." *Maravilla Maravilla v. Ashcroft*, 381 F.3d 855, 858 (9th Cir. 2004) (internal quotation marks omitted). Given the judge's and government counsel's comments on the insufficiency of the medical evidence presented, we have no trouble finding that counsel's performance may have affected the outcome in her case.

We conclude that Juarez-Baez has satisfied the prejudice prong because she has made a plausible claim for extreme hardship based on her daughter's condition. For this reason, counsel's failure to introduce available evidence as to hardship may have affected the outcome in her case.

We grant the petition for review. We remand to the BIA under *INS v. Ventura*, 537 U.S. 12, 16 (2002) to consider the full extent of newly acquired evidence of hardship.

PETITION GRANTED. REMANDED.